

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34417

STATE OF IDAHO,)	2008 Unpublished Opinion No. 728
)	
Plaintiff-Respondent,)	Filed: December 4, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
LINDA DEANN BASSETT aka ANDREGG,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Judgment of conviction for grand theft, affirmed.

Molly J. Huskey, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Thomas Tharp, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Linda Deann Bassett appeals from her conviction for grand theft. She contends that the district court erred by limiting her cross-examination of two prosecution witnesses.

I.

FACTS AND PROCEDURE

In early March 2006, Tresa Metal hired Bassett as a bookkeeper for Metal's business, Abbott Insurance. Bassett's duties included entering transactions into a computer accounting system and writing checks for Metal's signature for payroll and to pay bills. About a month after Bassett began work, Metal detected unauthorized checks on and charges to her checking account. Metal contacted the Boise police. Bassett was interrogated by a detective and made incriminating statements admitting, with explanations, writing certain checks and making certain transactions, while denying others. Bassett was charged with grand theft by unauthorized control

in an amount in excess of \$1,000. Idaho Code §§ 18-2403(3), -2407(1)(b). The State also sought a persistent violator sentence enhancement. I.C. § 19-2514.

At trial, Metal testified that shortly after Bassett began her employ she declined Bassett's request for an advance on her pay, explaining that "we needed to ask Ron, who is my fiancé, and we needed to talk further about anything like that." Metal said that in early April the business was short of money to make payroll and that she found this suspicious because she had not yet cashed a \$22,000 check on the account that she had written to herself. Metal further testified that Bassett had gone to Ron Walsh (Metal's fiancé) to get a loan in order to pay the business's employees and that she suspected Bassett had told Walsh that Metal had spent all of the money needed for payroll. The district court sustained relevance objections to several questions asked by defense counsel on cross-examination of Metal and the detective. The jury returned a guilty verdict, and Bassett admitted her status as a persistent violator.

II.

ANALYSIS

On appeal, Bassett challenges the district court's ruling sustaining objections to portions of her cross-examination of Metal and the detective. We consider first the restrictions on Bassett's cross-examination of Metal. On direct examination by the State, Metal testified that she signed three blank payroll checks before she left on vacation and that Bassett filled in her own name on the checks as payee and cashed them. Metal also testified that debit cards for the business checking account were kept in Bassett's desk, that numerous unauthorized charges were made using these cards during the time of Bassett's employment and that entries in the accounting system had been altered to cover up the goods and services that had been purchased. On cross-examination, defense counsel asked Metal whether she used company money for personal expenses, whether Metal wrote checks to herself out of the business checking account, whether Metal's fiancé had been critical of her using business funds in this manner, and whether Metal directed Bassett to change code entries in the accounting system to conceal Metal's misuse of business funds from her fiancé. The district court sustained the State's relevance objections to this questioning.

Bassett contends that the district court's rulings were erroneous because the evidence she sought to elicit was relevant to whether Metal herself was raiding the company's monies and accusing Bassett of criminal conduct to conceal Metal's transgressions from her fiancé. Bassett

further claims that the district court's rulings violated her constitutional right to present a complete defense. *See generally California v. Trombetta*, 467 U.S. 479, 485 (1984). She contends that these errors were not harmless when subjected to the harmless error standard set forth in *Chapman v. California*, 386 U.S. 18 (1967), where the United States Supreme Court said that a constitutional error is harmless if the reviewing court determines, beyond a reasonable doubt, that the error in question did not contribute to the jury's verdict. *Id.* at 24.

For purposes of this opinion, we will assume that the excluded testimony would have borne at least marginal relevance to Bassett's defense, but we conclude that any such error was harmless because all of the evidence that Bassett contends was improperly excluded was admitted elsewhere at trial.

On cross-examination by Bassett, Metal repeatedly testified that she had the authority to personally write checks on the business checking account and that she had done so, that she had used the three business financial transaction cards to purchase personal items while she was on vacation, denied personally changing any of the entries in the accounting system for the transactions at issue in the criminal case and further denied instructing Bassett to change entries to hide her own personal spending habits. In light of other questioning allowed and evidence adduced, Bassett's claim of reversible error and denial of her right to present a complete defense are specious.

The limitation on Bassett's cross-examination of the detective occurred as follows. The detective testified that during an interrogation, Bassett essentially confessed to making some of the transactions at issue. In an apparent attempt to show that her incriminating statements were the product of coercive conditions, defense counsel asked the detective how long Bassett was kept waiting in the interview room before the detective entered. The State objected on relevance grounds, and district court sustained the objection. It is this decision that Bassett posits as error.

We agree that the district court erred because the evidence is both relevant and admissible as a matter of federal constitutional law. In *Crane v. Kentucky*, 476 U.S. 683 (1986), the trial court denied the defendant's motion to suppress his confession, concluding that it was voluntarily made. In response to defense counsel's opening statement in which he announced his intent to present evidence showing that the confession should not be believed by the jury because of the circumstances under which it was obtained, the prosecutor moved to exclude this evidence. The trial court granted the motion in part, precluding the defense presentation of

evidence about the duration of the interrogation or the individuals who were in attendance. *Id.* at 684-86. The United States Supreme Court found that the defendant's constitutional right to present a complete defense was abridged by the ruling, as its prior case law made clear that the credibility of a confession was a question for the jury separate from its admissibility and that evidence pertinent to that issue could not be arbitrarily excluded. *Id.* at 688-91. *See also State v. Dillon*, 93 Idaho 698, 709-10, 471 P.2d 553, 564-65 (1970); *State v. Fisk*, 92 Idaho 675, 680, 448 P.2d 768, 773 (1968). Even though the trial court may find the defendant's statement not suppressible for coercion, "evidence may be offered at trial with respect to the circumstances surrounding the statements, including the manner in which they were obtained, and the jury shall be instructed that they may give such weight and credence to the statements, in view of all of the circumstances, as they see fit." *Dillon*, 93 Idaho at 710, 471 P.2d at 565.

The error in the exclusion of the detective's testimony on this point is harmless, however, because Bassett herself testified that she was kept waiting in the interview room for five minutes. The evidence that was excluded from the detective's testimony came in through Bassett. Therefore, no reversible error has been shown in the exclusion of the evidence.

Because the trial errors were harmless, the judgment of conviction is affirmed.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**